

**North Central New Mexico Economic Development District
Non-Metro Area Agency on Aging**

**NUTRITION SERVICE INCENTIVE PROGRAM (NSIP)
SUBRECIPIENT CONTRACTOR SUB-AWARD**

This Agreement is made and entered into this 1st day of July 2022, by and between the North Central New Mexico Economic Development District (NCNMEDD) Non-Metro Area Agency on Aging (Non-Metro AAA), hereinafter referred to as the "Agency" and City of Gallup, hereinafter referred to as the "Subrecipient Contractor."

PURPOSE

The Nutrition Services Incentive Program (NSIP) provides incentives for the effective delivery of nutritious meals to older individuals. NSIP funds allow nutrition programs to increase the number of meals served.

The purpose of this Agreement is to allocate funds in support of the provision of congregate and home delivered meals provided under Title IIIC of the Older Americans Act (OAA). The Subrecipient Contractor must be a recipient of Title III funding or Title III matching funds.

IT IS AGREED BETWEEN PARTIES:

1. Scope of Work

The subrecipient Contractor will:

- A. Establish procedures to ensure that such cash payments are used solely for the purchase of United States agriculture commodities and other foods produced in the United States for the use in the senior nutrition program. No imported foods, or food items containing imported products, may be purchased with these funds. e.g., coffee, tea, cocoa, and bananas.
- B. Ensure that NSIP funds are used exclusively for the purchase of food, not meal preparation, and may not be used for administrative costs.
- C. Ensure that meals furnished under contractual agreement with food service management companies, caterers, restaurants, or institutions, contain foods or commodities of United States origin; imported foods may not be purchased with these funds.
- D. Encourage the purchase and use of locally sourced farm fresh food products that meet the nutritional standards of the Agency. Subrecipient Contractors must ensure that the farm food products meet the New Mexico Environment Department requirements.
- E. Ensure that each meal complies with the most recent Federal and State nutritional guidelines and requirements.

- F. Maintain accounting records for NSIP separate and apart from other accounting records maintained for other nutrition funding sources (i.e., Title IIIC-1 and Title IIIC-2 and other cash used for the purchase of food).
- G. Report monthly to the Agency on forms provided by the Agency and submit such other reports deemed necessary by the agency.
 - a) Submit timely and accurate consumer/client tracking service documents (rosters and transmittals) as required by the AAA by the close of business on the fifth (5th) workday of each month following the last day of the month in which services were provided. If the fifth (5th) falls on a weekend or AAA holiday, the information will be delivered, recorded or submitted by close of business on the next business day.
- H. Submit monthly expenditure reports and supporting backup documentation (receipts or invoices) by the fifth (5th) workday of each month following the last day of the month in which services were provided. If the fifth (5th) falls on a weekend or AAA holiday, the information will be delivered, recorded or submitted by close of business on the next business day. Supporting documents must include:
 - a. The vendor's name, address and contact information.
 - b. Internal transaction number
 - c. The purchased items with a description of each product along with the corresponding quantity.
 - d. The price for each item and any applicable discount given and the total amount of the sale items.
 - e. NSIP items must be identified with an "N" or "NSIP" on the invoice.
 - f. Senior center or meal site to which received the delivery, their full name, address, and contact information.
- I. Maintain documented NSIP eligibility for all meals reported. Meal counts, as recorded in the service database, must be accurate, unduplicated and include no meals that do not meet the requirements for NSIP eligibility.
- J. Maintain and retain for three (3) years from close of the federal fiscal year to which they pertain, complete and accurate records of all amounts received and disbursed under this Agreement.
- K. Allow the Agency to monitor periodically the Subrecipient Contractor's fiscal accountability of NSIP.
- L. Be subject to state and federal audit requirements, as the contract of which this scope of work is a part, is funded with federal funds. The Subrecipient Contractor is considered an independent contractor of NSIP federal financial assistance, subject to audit requirements under Title II Part 200 of the Code of Federal Regulations, formerly known as Office of Management and Budget, Circular A-133 and Government Audit Standards.

- M. Ensure eligible consumers are assessed and information recorded in the service database.
- N. Ensure efforts given to serving eligible persons with the greatest social or economic need, with particular attention to minority individuals with low incomes. Efforts must also be given to targeting individuals with Alzheimer's disease and related disorders, with severe disabilities or at-risk of institutionalization and their caregivers.
- O. The Agency recommends these funds be expended prior to Title III-C funds.

2. **Compensation**

- A. The total amount payable under this Agreement shall not exceed **\$45,646.00** for the purchase of foods produced in the United States, for use in senior nutrition programs. The Subrecipient Contractor is responsible for notifying the Agency when the services provided under this Agreement reach the total compensation amount. In no event will the Subrecipient Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.
- B. Assistance Listing Number: 93.053

3. **Gross Receipts Tax**

Not applicable. Tax exempt.

4. **Term**

This Agreement shall begin on July 1, 2022, and terminate on June 30, 2023, unless terminated pursuant to paragraph 5 or paragraph 6 or for any other reason allowed by law.

5. **Termination**

- A. This Agreement may be terminated by the Agency without cause upon written notice delivered to the Subrecipient Contractor at least thirty days (30) days prior to the intended date of termination. By such termination, neither party may nullify obligations already incurred for performance prior to the date of termination. This Agreement may be terminated immediately upon written notice to the Subrecipient Contractor if the Subrecipient Contractor becomes unable to perform the services contracted for, as determined by the Agency, or if, during the term of this Agreement, the Subrecipient Contractor or any of its officers, employees or agents, is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein, or if the Subrecipient Contractor fails to comply with any of the terms contained herein or is in breach of this Agreement. This provision is not exclusive and does not waive the Agency's other legal rights and remedies caused by the Subrecipient Contractor's default or breach of this Agreement. This Agreement may also be terminated by the Subrecipient Contractor upon thirty (30) days written notice to the Agency.

B. **Termination Management**: Immediately upon receipt by either the Agency or the Subrecipient Contractor of notice of termination of this Agreement, the Subrecipient Contractor shall: 1) not incur any further obligations for services or any another expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Subrecipient Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the Agency as soon as practicable.

6. Appropriations

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the U.S. Congress and/or Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made, the Agreement shall terminate upon written notice being given to the Subrecipient Contractor. The Agency's decisions as to whether sufficient appropriations are available shall be accepted by the Subrecipient Contractor and shall be final.

7. Status of Subrecipient Contractor

The Subrecipient Contractor and its agents and employees are independent subrecipient contractors performing services for the Agency and are not employees of the Agency. The Subrecipient Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of Agency vehicles, or any other benefits afforded to employees of the Agency as a result of this Agreement. The Subrecipient Contractor acknowledges that all sums received hereunder are reportable for income tax purposes.

8. Assignment

The Subrecipient Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

9. Subcontracting

The Subrecipient Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Subrecipient Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Agency.

10. Records and Audit

A. The Subrecipient Contractor shall maintain detailed records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them

for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Aging & Long-Term Services Department (ALTSD), the Department of Finance and Administration, and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive, improper, or illegal payments.

B. The Subrecipient Contractor will provide a financial and compliance audit report to the Agency covering the period July 1, 2022, to June 30, 2023. The audit reports provided to the Agency must include a copy of the Auditor's management letter. The audit report shall be conducted by a certified public accountant in compliance with the Single Audit Act and shall encompass the following provisions.

- a) The subrecipient contractor, expending equal to \$750,000 but less than or equal to \$250,000 in combined federal funds, shall have an audit conducted in accordance with the Code of Federal Regulations, Title 2, Subtitle A, Chapter II, Part 200. The audit report shall include a schedule of administrative and program expenses for each separate title or program (Title IIIB, Title IIIC-1, Title IIIC-2, Title IIID, Title IIIE, NSIP, etc.) which facilitates a reconciliation of audited costs to the final report.
- b) Submittal of the audit report for governmental entities shall be within ten (10) working days after release by the New Mexico State Auditor's Office. For non-governmental entities, the audit report is due four (4) months after the end of the entity's fiscal year.

11. Release

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

12. Product of Service -- Copyright

All materials developed or acquired by the Subrecipient Contractor under this Agreement shall become the property of the Agency and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Subrecipient Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Subrecipient Contractor.

13. Conflict of Interest

The Subrecipient Contractor warrants that it presently has no interest and shall not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance or services required under this Agreement.

14. Equal Opportunity Compliance

The Subrecipient Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Subrecipient Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Subrecipient Contractor is found not to be in compliance with these requirements during the life of this Agreement, Subrecipient Contractor agrees to take appropriate steps to correct these deficiencies.

15. Confidentiality

Any confidential information provided to or developed by the Subrecipient Contractor in performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Subrecipient Contractor without the prior written approval of the Agency.

Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal law or regulations.

16. Amendment

This Agreement shall not be altered, changed, or amended except by instrument in writing executed by the parties hereto.

17. Merger

This Agreement incorporates all the Agreements, covenants and understandings between the Parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

18. Penalties for Violation of Law

The Procurement Code, Sections 13-1-28 through 13-1-199, N.M.S.A. 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kickbacks.

19. Applicable Laws

This Agreement shall be governed by the laws and regulations of the (a) State of New Mexico (b) Older Americans Act of 1965, as amended, (c) the Agricultural Act of 1949 as amended; and (d) any other applicable laws and regulation of the federal government.

20. Invalid Term or Condition

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

21. Enforcement of Agreement

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

22. Notices

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency:
NCNMEDD – Non-Metro AAA
Attention: Neil Segotta, AAA Director
3900 Paseo del Sol
Santa Fe, New Mexico 87507

To the Subrecipient Contractor:

23. Indemnification

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitation of the New Mexico Tort Claims Act.

24. Authority

The Individual(s) signing this Agreement on behalf of the Subrecipient Contractor represents and warrants that he or she has the power and authority to bind Subrecipient Contractor, and that no further action, resolution, or approval from Subrecipient Contractor is necessary to enter into a binding contract.

25. Signatures:

For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective July 1, 2022.

City of Gallup
Legal Name of Subrecipient Contractor

Signature

Printed/Typed Name of Signatory

Date

NCNMEDD Non-Metro Area Agency on Aging
Name of Area Agency on Aging

Monica Abeita
Signature

Monica Abeita, Executive Director
Printed/Typed Name of Signatory

07/01/2022
Date